

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Eagle Properties)
Map 118-16-0, Parcel 5.00) Davidson County
Industrial Property)
Tax Years 2005 & 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$433,800	\$1,733,300	\$2,167,100	\$866,840

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on January 25, 2007 in Nashville, Tennessee. In attendance at the hearing were registered agent L. Stephen Nelson and Debbie Smith for the appellant, and Davidson County Property Assessor's representative Kenny Vinson.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 3.37 acre site improved with a warehouse constructed in 1950 containing approximately 76,800 square feet of net rentable area. Subject property is located at 2940 Kraft Drive in Nashville, Tennessee.

The taxpayer contended that subject property should be valued at \$1,536,500. In support of this position, the income approach was introduced into evidence.

The assessor contended that subject property should be valued at \$2,167,100. In support of this position, the cost and income approaches were introduced into evidence. In addition, Mr. Vinson noted that subject property was purchased on April 16, 2001 for \$2,300,000.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2)

the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

In view of the definition of market value, the income-producing nature of the subject property and the age of subject property, generally accepted appraising principles would indicate that the market and income approaches have greater relevance and should normally be given greater weight than the cost approach in the correlation of value indicators.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$2,167,100 as contended by the assessor of property.

Since the taxpayer is appealing from the determination of the Davidson County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

Respectfully, the administrative judge finds that the taxpayer's income approach cannot provide a basis of valuation absent additional evidence. The administrative judge finds that the procedure typically utilized in the income approach has been summarized in one authoritative text as follows:

Although there are various income capitalization techniques available to the appraiser, certain steps are essential in applying the income capitalization approach. Before applying any capitalization techniques, an appraiser must work down from potential gross income to net operating income. To do this, the appraiser will:

1. Research the income and expense data for the subject property and comparables.
2. Estimate the potential gross income of the property by adding the rental income and any other potential income.
3. Estimate the vacancy and collection loss.
4. Subtract vacancy and collection loss from total potential gross income to arrive at the effective gross income of the subject property.
5. Estimate the total operating expenses for the subject by adding fixed expenses, variable expenses, and a replacement allowance (where applicable).

6. Subtract the estimate of total operating expenses from the estimate of effective gross income to arrive at a net operating income.
7. Apply one of the direct or yield capitalization techniques to this data to generate an estimate of value via the income capitalization approach.

Appraisal Institute, *The Appraisal of Real Estate* at 493-94 (12th ed. 2001).

The administrative judge finds that the taxpayer's income approach essentially constitutes an appraisal of the leased fee estate rather than the fee simple estate.¹ For example, subject property experienced vacancy rates of 0%, 0% and 31% in 2002, 2003 and 2004 respectively. The taxpayer assumed a 30% vacancy and collection loss in the pro forma set forth in exhibit 1. The administrative judge finds that no evidence was introduced to establish the market vacancy rate for similar properties. Moreover, the 31% vacancy rate experienced in 2004 appears to be an anomaly given the 100% occupancy rates achieved in both 2002 and 2003.

The administrative judge recognizes that a 2001 sale must be considered somewhat remote in time given a January 1, 2005 assessment date.² Nonetheless, the administrative judge finds it inappropriate to simply ignore the sale given the fact it differs from the assessor's income derived value by only 5.8%.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax years 2005 and 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$433,800	\$1,733,300	\$2,167,100	\$866,840

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of

¹ The Assessment Appeals Commission ruled in *First American National Bank Building Partnership* (Davidson Co., Tax Years 1984-1987) that it “is the entire fee simple unencumbered value and not any lesser or partial interests” which is normally subject to taxation.


² Davidson County was reappraised effective January 1, 2005. The value established as of that date is simply being carried forward to tax year 2006.

the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 15th day of February, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. L. Stephen Nelson
Jo Ann North, Assessor of Property